



General Assembly

January Session, 2009

Raised Bill No. 6683

LCO No. 4910

* ____HB06683APP__051909__ *

Referred to Committee on Judiciary

Introduced by:
(JUD)

***AN ACT CONCERNING THE RESOLUTION OF CLAIMS INVOLVING
WORKERS' COMPENSATION LIENS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 31-293 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2009*):

4 (a) When any injury for which compensation is payable under the
5 provisions of this chapter has been sustained under circumstances
6 creating in a person other than an employer who has complied with
7 the requirements of subsection (b) of section 31-284, a legal liability to
8 pay damages for the injury, the injured employee may claim
9 compensation under the provisions of this chapter, but the payment or
10 award of compensation shall not affect the claim or right of action of
11 the injured employee against such person, but the injured employee
12 may proceed at law against such person to recover damages for the
13 injury; and any employer or the custodian of the Second Injury Fund,
14 having paid, or having become obligated to pay, compensation under
15 the provisions of this chapter may bring an action against such person
16 to recover any amount that he has paid or has become obligated to pay

17 as compensation to the injured employee. If the employee, the
 18 employer or the custodian of the Second Injury Fund brings an action
 19 against such person, he shall immediately notify the others, in writing,
 20 by personal presentation or by registered or certified mail, of the action
 21 and of the name of the court to which the writ is returnable, and the
 22 others may join as parties plaintiff in the action within thirty days after
 23 such notification, and, if the others fail to join as parties plaintiff, their
 24 right of action against such person shall abate. In any case in which an
 25 employee brings an action against a party other than an employer who
 26 failed to comply with the requirements of subsection (b) of section 31-
 27 284, in accordance with the provisions of this section, and the
 28 employer is a party defendant in the action, the employer may join as a
 29 party plaintiff in the action. The bringing of any action against an
 30 employer shall not constitute notice to the employer within the
 31 meaning of this section. If the employer and the employee join as
 32 parties plaintiff in the action and any damages are recovered, the
 33 damages shall be so apportioned that the claim of the employer, as
 34 defined in this section, shall take precedence over that of the injured
 35 employee in the proceeds of the recovery, after the deduction of
 36 reasonable and necessary expenditures, including attorneys' fees,
 37 incurred by the employee in effecting the recovery. If the action has
 38 been brought by the employee, the claim of the employer shall be
 39 reduced by an amount that represents the employer's contribution
 40 toward attorney's fees for the collection of the employer's claim from
 41 the proceeds of the recovery. Such amount shall be computed by
 42 multiplying the total amount of such reasonable attorney's fees and
 43 costs by a fraction, the numerator of which shall be the amount of
 44 reimbursable workers' compensation benefits received by the
 45 employee, and the denominator of which shall be the amount of
 46 damages recovered by the employee, less court costs. In no event shall
 47 such amount exceed one-third of the amount of the benefits to be
 48 reimbursed to the employer. No right to reimbursement by the
 49 employer shall attach until such time as the proceeds of the recovery
 50 are in the possession and control of such employee. The rendition of a
 51 judgment in favor of the employee or the employer against the party

52 shall not terminate the employer's obligation to make further
53 compensation which the commissioner thereafter deems payable to the
54 injured employee. If the damages, after deducting the employee's
55 expenses as provided in this subsection, are more than sufficient to
56 reimburse the employer, damages shall be assessed in his favor in a
57 sum sufficient to reimburse him for his claim, and the excess shall be
58 assessed in favor of the injured employee. No compromise with the
59 person by either the employer or the employee shall be binding upon
60 or affect the rights of the other, unless assented to by him. For the
61 purposes of this section, the claim of the employer shall consist of (1)
62 the amount of any compensation which he has paid on account of the
63 injury which is the subject of the suit, and (2) an amount equal to the
64 present worth of any probable future payments which he has by award
65 become obligated to pay on account of the injury. The word
66 "compensation", as used in this section, shall be construed to include
67 incapacity payments to an injured employee, payments to the
68 dependents of a deceased employee, sums paid out for surgical,
69 medical and hospital services to an injured employee, the burial fee
70 provided by subdivision (1) of subsection (a) of section 31-306,
71 payments made under the provisions of sections 31-312 and 31-313,
72 and payments made under the provisions of section 31-284b in the case
73 of an action brought under this section by the employer or an action
74 brought under this section by the employee in which the employee has
75 alleged and been awarded such payments as damages. Each employee
76 who brings an action against a party in accordance with the provisions
77 of this subsection shall include in his complaint (A) the amount of any
78 compensation paid by the employer or the Second Injury Fund on
79 account of the injury which is the subject of the suit, and (B) the
80 amount equal to the present worth of any probable future payments
81 which the employer or the Second Injury Fund has, by award, become
82 obligated to pay on account of the injury. Notwithstanding the
83 provisions of this subsection, when any injury for which compensation
84 is payable under the provisions of this chapter has been sustained
85 under circumstances creating in a person other than an employer who
86 has complied with the requirements of subsection (b) of section 31-284,

87 a legal liability to pay damages for the injury and the injured employee
88 has received compensation for the injury from such employer, its
89 workers' compensation insurance carrier or the Second Injury Fund
90 pursuant to the provisions of this chapter, the employer, insurance
91 carrier or Second Injury Fund shall have a lien upon any judgment
92 received by the employee against the party or any settlement received
93 by the employee from the party, provided the employer, insurance
94 carrier or Second Injury Fund shall give written notice of the lien to the
95 party prior to such judgment or settlement.

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| This act shall take effect as follows and shall amend the following sections: | | |
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| Section 1 | <i>October 1, 2009</i> | 31-293(a) |
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JUD *Joint Favorable*

APP *Joint Favorable*